Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Regulation of Prepaid Calling Card Services	)	WC Docket No. 05-68

REPLY COMMENTS OF VERIZON

As most commenters recognize, the two variations of prepaid calling cards discussed in the NPRM – one which provides an option of listening to advertisements and one which uses IP transport in the middle of the call – are telecommunications services for the reasons given in the Commission's *AT&T Pre-Paid Calling Card* and *Phone-to-Phone IP* Orders.[1] In particular, the advertisements in the first option are "completely incidental to [the long distance calling capability] and therefore not sufficient to warrant reclassification of the service as an information service." *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd 4826, ¶ 20 (2005) ("*AT&T Pre-Paid Calling Card Order*"). And the second option "consists of an interexchange call that is initiated in the same manner as traditional interexchange calls," uses "ordinary customer premises equipment," "originates and terminates on the PSTN," and "undergoes no net protocol conversion." *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charge*, 19 FCC Rcd 7457, 7465 (2004) ("*Phone-To-Phone IP Order*"). Because these variations are telecommunications services, AT&T and other providers of similar offerings must pay access charges and contribute toward universal service.

[1] *See* Comments of American Public Communications Council, DJE Consulting, General Communications, Inc., ITTA/NTCA/OPASTCO/Western Telecommunications Alliance, NASUCA, NECA, New York Department of Public Service, Sprint, USTA, and WilTel.

Discussion

No commenter has offered any basis for finding that the two variations discussed in the *NPRM* are information services. To the contrary, not only is it clear that these offerings are telecommunications services, but it is also evident that a contrary holding would invite gamesmanship that could jeopardize universal service funding and compromise access charge revenues.[2]

The First Variant: Optional Advertising

AT&T, IDT, and eKit raise several arguments in an effort to classify calling cards that provide optional access to advertising as information services. None has any merit.

First, the *Talking Yellow Pages Order* does not support categorizing the first variant as an information service. *See* AT&T at 6-7, IDT at 4-5, eKit at 3-4. The offering at issue in *Talking Yellow Pages* – which enabled customers dialing a local number to hear recorded advertisements under various information categories – is both factually and legally distinguishable from the advertising-optional calling card service under consideration here. There, the service being held out to the public was a telephone-based alternative to print yellow pages; there was no associated calling card capability or any other form of telecommunications service. *See Northwestern Bell Telephone Company Petition for Declaratory Ruling*, 2 FCC Rcd 5986 (1987) ("*Talking Yellow Pages*"). Here, in contrast, the service held out to the public is the ability to make long distance

[2] *See, e.g.*, GCI at 3 ("[u]nder AT&T's logic, a carrier would only have to add time of day or restaurant suggestions to the front end of any traditional wireline or wireless call (regardless of jurisdiction) as a justification for evading contributions and any access charge payments"); USTA at 4 ("[i]f the first variant of AT&T's prepaid calling card service were found to be an information service … then it may only be a short period of time before providers of all types of services … implement systems that provide their customers with interactive options that have nothing, or very little, to do with making a telephone call … in order to have their services classified as information services"); Sprint at 10 & n.11; NASUCA at 16.

calls – a paradigm telecommunications service – and the advertising feature is at most ancillary. Indeed, notwithstanding AT&T's claim (at 9) that the "marketing associated with the new enhanced prepaid card service affirmatively highlights the interactive information features," AT&T's web site emphasizes the long distance calling capability of the pre-paid cards and "makes no mention of the incidental ability to access merchant information." ITTA/NTCA/OPASTCO/WTA at 4-5 (*citing* www.consumer.att.com/prepaidcard/); *see also* Sprint at 7 ("as set forth on AT&T's prepaid card web site … AT&T does not even suggest that the cards enable the users to spend their minutes listening to advertisements. Rather, AT&T explains that when a person buys an AT&T prepaid card, he is 'purchas[ing] calling minutes in advance'").

Second, that some undisclosed (but undoubtedly small) percentage of the purchasers of these cards choose to listen to the advertisements, *see* AT&T at 9, does not convert the calling card long distance offering into an information service. As WilTel points out, the advertisements are not "offered to customers in a 'single, integrated information service,' and 'the underlying telecommunications [can] be separated from the data processing capabilities' without changing the fundamental character of the calling card service." WilTel at 6, *citing Pre-Paid Calling Card Order* at ¶¶ 20-21. Accordingly, the option to listen to advertisements is an "incidental to basic" service, just like the advertising component considered in the *Pre-Paid Calling Card Order*. *See Pre-Paid Calling Card Order* at ¶ 16. To be an enhanced service, the information made available must be "'the essential service provided'"; otherwise it is merely "'incidental' to the basic telecommunications service," as is the case here. *Id.* at n.28, *citing AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, 4 FCC Rcd 3429, ¶ 20 (1989).[3]

[3] Thus, contrary to AT&T's suggestion (at 8) that the "Commission has no legal authority to adopt a new 'incidental' vs. 'essential' test in this proceeding for purposes of the information

Third, even if the provision of advertisements to calling card customers were considered an enhanced service, the *Talking Yellow Pages Order* confirms that the long distance calling capability would remain a telecommunications service. As the Commission explained in that decision, and as it has noted on numerous occasions in the succeeding eighteen years, "entities that offer both interexchange and enhanced services are treated as carriers with respect to the former offerings, but not with respect to the latter." *Talking Yellow Pages*, 2 FCC Rcd at ¶ 18.[4] Put another way, even if the first variation contained some enhanced components, the mere presence of those components would not override the telecommunications service nature of the fundamental offering.

Fourth, and relatedly, while companies such as IDT and eKit may have introduced (or may plan to introduce) calling cards that provide the user with access to news, information content, and e-mail capabilities, the inclusion of such capabilities in a long distance calling card does not convert the long distance component into an information service. Contrary to IDT's suggestion, these cards are not "hybrid" offerings which should be considered entirely enhanced. As IDT itself acknowledges, the Commission has explained that the relevant inquiry is "whether,

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service classification," the Commission has employed such an analysis at least since the 1989 *AT&T Dial-It Order*. *See also* Response of the Federal Communications Commission in Opposition to AT&T's Motion for Stay Pending Appeal, No. 05-1096 (D.C. Cir. Filed May 2, 2005), at 11 (explaining why AT&T is wrong in contending that the "incidental" or "adjunct to basic" classification "applies only to functions that are 'necessary for or integrally related to' call completion or billing," *citing North American Telecommunications Assoc'n Petition for Declaratory Ruling*, 101 F.C.C.2d 349, ¶ 27 (1985) and *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 7 FCC Rcd 3528, ¶ 21 (1992)).

[4] *See also IDCMA Petition for Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Services*, 10 FCC Rcd 13717, ¶¶ 40-46 (1995); *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz*, 15 FCC Rcd 16934, ¶ 27 (2000); *AT&T Submarine Systems, Inc. Application for a License to Land and Operate a Digital Submarine Cable System Between St. Thomas and St. Croix in the U.S. Virgin Islands*, 11 FCC Rcd 14885, ¶ 29 (1996); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 992 (1996).

functionally, the consumer is receiving two separate and distinct services." IDT at 12, *citing Federal-State Joint Board on Universal Service*, 13 FCC Rcd 5318, ¶ 282 (1997).[5]

Fifth, requiring calling card providers to pay access charges and contribute to universal service would not inhibit investment or deter innovation. *See* eKit at 4-7, IDT at 13-14. In reality, assuring that long distance calls made via calling cards are subject to the same USF and access charges as non-calling card long distance calls *promotes* investment and innovation by preserving a level competitive playing field. In contrast, regulations that favor or disfavor particular technologies, as sought by eKit, distort competition and create barriers to investment. As the Commission has emphasized, "[c]ompetitively neutral rules will ensure that … disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of particular service providers." *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 48, 49 (1997). And, in any event, there is no indication that innovation in calling card services has suffered to date, even though many providers are paying access charges and contributing to universal service as required by the Commission's rules.

Finally, there is no merit to AT&T's claim (at 16-17) that, even if the calling card is a telecommunications service, the communications from the platform (*i.e.,* the customer-selected advertisements) are an integral part of the offering and the platform should be considered an

[5] eKit (at 3 & n.6) asks the Commission to limit any action in this proceeding to the two variations described by AT&T and to deal with other "enhanced" calling card offerings in the *IP-Enabled Services* docket; *see also* SBC at 1-5 (the Commission should "fix" inter-carrier compensation, which would eliminate the need for action in this proceeding). Although Verizon agrees that clarifying the access charge and universal service obligations of IP-enabled services would obviate the need for calling-card specific rulings, the Commission must at a minimum reiterate the obligation of calling card providers to pay access charges and contribute to universal service when the cards are used to make long distance calls. There is too much risk of game-playing – and too much potential harm to universal service and network investment – if the Commission defers action to some unspecified future date.

interstate end-point, so that the Commission should assert exclusive jurisdiction over calling card traffic. The Commission rejected this argument in the *Pre-Paid Calling Card Order* (at ¶¶ 22-26), and there is no basis for re-visiting it here. AT&T provides no data regarding the relative frequency with which customers access the advertisements, and thus fails to substantiate its assertion that the communications from the platform are integral to the offering. Moreover, even if the communications from the platform were interstate, AT&T has supplied no basis for holding that *all* uses of its calling card – including the making of intrastate calls – are interstate as well. For example, AT&T has not suggested that it is impossible to determine the end-points of long distance calls made using the calling cards, and any such claim would be untenable.

The Second Variant: IP in the Middle

Notably, no party contends that the IP-in-the-middle variation is an information service. Indeed, even AT&T apparently has abandoned this argument, and rightly so, as Verizon explained in its comments (at 5-6). Instead, AT&T urges the Commission to assert exclusive jurisdiction over all calling card calls, on the theory that AT&T is now at a disadvantage compared to other calling card providers, which assertedly are avoiding intrastate access charges by routing intrastate calling card calls through foreign countries or stripping the calling party number.

If AT&T's allegations are correct – and they are not with respect to Verizon – then the appropriate response is to compel competitors to comply with all applicable legal requirements, not to deprive states of jurisdiction over intrastate calling card calls.[6] Granting AT&T's request

[6] Verizon does not strip off the calling party number from its calling card calls; rather, it passes both the calling party number and the destination number to the interexchange carriers that transport the calls. The transport fees it pays to those carriers include the appropriate interstate or intrastate access charge for each call, which the carrier is required to pay to the terminating local exchange carrier. Moreover, Verizon determines the jurisdictional nature of a call based

would reward entities that are evading their legal obligations, while depriving LECs of intrastate access charge revenues which are used to support affordable, high-quality telephone service. Such an outcome would be antithetical to the public interest.

Other Matters

AT&T (at 15) asserts that its prepaid cards are "disproportionately purchased by low-income, minority, and other protected groups," urges the Commission to "preempt imposition of intrastate access charges" on prepaid calling cards in order "to keep these uniquely affordable cards as an option available," and claims that it would be "inequitable to force those end-users to bear the burden of intrastate access charges, which concededly contain implicit subsidies that violate the Act." As a threshold matter, AT&T has failed to establish (1) that its cards are disproportionately purchased by the cited groups (which may not be the case; *see* Sprint at 9 n.8), (2) that all or even most intrastate access charges contain implicit subsidies (which is not the case; many states have reduced intrastate access charges to interstate levels), and (3) that applying intrastate access charges to intrastate calling card calls would render those cards unaffordable (which also is not the case; Verizon, Sprint, and other calling card providers pay intrastate access charges but have established calling card rates competitive with AT&T's).

Finally, AT&T (at 18-19) now urges that all prepaid calling card services contribute to the federal universal service fund, regardless of whether they are considered information services or telecommunications services. Because all pre-paid calling cards are used to provide telecommunications services, Verizon agrees that the interstate revenues from these cards should be subject to the federal USF. To the extent some cards may be used to provide enhanced services in addition to telecommunications services, the Commission should address universal

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upon the location of the calling and called parties, and it bases universal service fund payments on the revenues Verizon receives from the sale of prepaid calling cards.

service issues in its broader universal service reform, IP-enabled services, and broadband proceedings, where it already has amassed comprehensive records regarding possible changes to the universal service contribution methodology and the policy and legal issues associated with expanding the contribution base to include IP-enabled and other broadband offerings.

Conclusion

The Commission should expeditiously declare that the two "variations" of pre-paid calling card offerings identified in AT&T's November 22 letter, as well as all similar offerings, are telecommunications services and thus are subject to interstate and intrastate access charges and universal service contribution obligations.

Respectfully submitted,

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